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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/744,784	01/26/2001	Hartmut Breuninger	1998CH017	5014

25255 7590 06/23/2004

CLARIANT CORPORATION  
INTELLECTUAL PROPERTY DEPARTMENT  
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EXAMINER

ELHILO, EISA B

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 06/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Advisory Action</b>	Application No. 09/744,784	Applicant(s) BREUNINGER ET AL.	
	Examiner Eisa B Elhilo	Art Unit 1751	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 08 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 2 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: Claims 32-37 are newly presented claims.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 12-31.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Brian P. Munk  
Brian P. Munk  
PRIMARY EXAMINER  
TECH CENTER 1700

Art Unit: 1751

Continuation of 5. does NOT place the application in condition for allowance because: Applicant has not presented any additional data or showing to overcome the rejection of record. The arguments dated 5/8/2004 merely rehash the arguments presented earlier, which were fully responded by the examiner in the previous office action dated 4/8/2004. Further, with respect to the argument that the prior art of Kayane teaches away from that claimed by applicant, as the Kayane reference is directed to dry reactive dye composition, the examiner respectfully disagrees with the above argument for the reasons set in the previous office action that mailed on 4/8/2004 and also because Kayane as a primary reference teaches an aqueous solution prepared from the dye composition and water which is superior in storage stability, and useful for dyeing or printing fiber materials to give dyed or printed products having superior fastness with high reproducibility (see abstract), and, thus, the reference teaches an aqueous dye composition that comprises the claimed ingredients for same utility. Therefore, it is an obvious formulation.

Further, the test for obviousness is not what the individual references disclose but what the combined teachings of the reference would have suggested to one of ordinary skill in the art. *See In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

Furthermore, a reference may be relied upon for all that it would have reasonable suggested to one having ordinary skill in the art, including non-preferred embodiments. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989).